

Remarks

The Title of the present Application is currently amended to correct a misspelling.

Claims 1-14 are pending in the present application. No claims have been amended, cancelled, or added as part of this Amendment. Reconsideration is respectfully requested.

Claims 1 and 4-6 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,526,873 to Marsais et al. (hereinafter *Marsais et al.*) in view of U.S. Patent Application Publication No. 2003/0037913 to Knecht et al. (hereinafter *Knecht et al.*). The Examiner has indicated that claims 2, 3, and 7-14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The Applicants thank the Examiner for the indication that claims 2, 3, and 7-14 are allowable if rewritten in independent form; however, the Applicants respectfully traverse the rejection of independent claim 1 under §103 and respectfully assert that independent claim 1 is novel and nonobvious over *Marsais et al.* and *Knecht et al.*

First, the Applicants respectfully assert that the Examiner has failed to establish a *prima facie* case of obviousness. The Examiner has not provided any reasoning as to why one skilled in the art would be motivated to combine *Marsais et al.* and *Knecht et al.* For that matter, the Examiner has provided no reasoning as to how the combination of *Marsais et al.* and *Knecht et al.* arrives at the present invention claimed in claim 1. Since the rejection under §103 is unsupported by, any response by the Applicants would require that the Applicants speculate as to the basis of the rejection.

With reference to MPEP §2142, “[t]he key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious.” (emphasis added). Citing the opinion by the Supreme Court of the United States for *KSR Int’l Co. v. Teleflex Inc.*, 127 S.Ct. 1727 (2007), the Board of Patent Appeals and Interferences (BPAI) stated in a precedential opinion that “this analysis should be made explicit.” *Ex parte Thomas J. Whalen*, Appeal 2007-4423 (emphasis added). The present

rejection under §103(a) provides no articulation of the reasons why the claimed invention would have been obvious. As such, the Applicants respectfully assert that the Examiner has not established a *prima facie* case of obviousness. Regardless, the Applicants respectfully assert that independent claim 1 is nonobvious over *Marsais et al.* and *Knecht et al.*

Further, aside from the fact that a *prima facie* case of obviousness has not been established, the Applicants respectfully assert that the combination of *Marsais et al.* and *Knecht et al.* fails to teach or suggest all of the claimed elements of independent claim 1. The Examiner states on page 2 of the Office Action that *Knecht et al.* “disclose an intercooler in figure 3 that may be arbitrarily dividing into two sections, with, for example, one section having a single plate, and the other section the remaining plates.” Notably, the Examiner does not set forth the specific location of such disclosure in *Knecht et al.* and the Applicants respectfully assert that these claimed features are not taught or suggested by *Knecht et al.*

Knecht et al., does not teach or suggest that the intercooler 3 is divided into “a first and a second heat-exchange section (104, 106),” as claimed in claim 1. In addition, *Knecht et al.* is silent with respect to flow rates. Specifically, *Knecht et al.* fails to teach or suggest “the first heat-exchange section (102) having a first flow rate (Q1) of heat-transfer fluid passing through it, the second heat-exchange section (106) having a second flow rate (Q2) of heat-transfer fluid passing through it, the first flow rate (Q1) being greater than the second flow rate (Q2),” as claimed in claim 1. Further, in addition to not being taught or suggested by *Knecht et al.*, the Applicants respectfully assert that these features are not taught or suggested by *Marsais et al.* Because the combination of *Marsais et al.* and *Knecht et al.* fails to teach or suggest all of the elements of independent claim 1, the Applicants respectfully assert that claim 1 is nonobvious over the combination of *Marsais et al.* and *Knecht et al.*

In view of the foregoing, it is respectfully submitted that independent claim 1 and the claims that depend therefrom, are both novel and non-obvious such that these claims are in condition for allowance, which allowance is respectfully requested. This Amendment is considered timely filed with a three-month extension of time. The Commissioner is

authorized to charge our Deposit Account No. 08-2789 in the name of Howard & Howard Attorneys PLLC for any fees or credit the account for any overpayment for this matter.

Respectfully submitted,

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Dated: June 1, 2009

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